

**IN THE COURT OF APPEAL**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. AAU0085 of 2011**  
**(High Court Criminal Action No. HAC 008 of 2011 )**

**BETWEEN** : **TANIELA KURUYAWA**

***Appellant***

**AND** : **THE STATE**

***Respondent***

**Coram** : **Chandra JA**

**Counsel** : **Appellant in person.**  
**Mr M Korovou for the Respondent**

**Date of Hearing** : **24 October 2013**

**Date of Ruling** : **5 November 2013**

**RULING**

1. The Appellant was charged with a single count of Rape contrary to s.207(1)-(2)(b) of the Crimes Decree 44 of 2009 in the High Court at Suva.
2. The Appellant pleaded guilty and was sentenced to 11years imprisonment with a non-parole period of 8 years.

3. The Appellant filed a notice of appeal seeking leave to appeal against the sentence on 17 August 2011 and set out the following grounds of appeal:
  - (1) The sentence is manifestly harsh and excessive and wrong in principle.
  - (2) The learned Judge erred in law in not considering his early guilty plea which saved the courts time and resources.
  - (3) The sentence is unsafe and unsatisfactory.
4. The notice of appeal had been filed 33 days late and not in compliance with the 30 days period within which the appeal should have been filed.
5. When the application had been mentioned in the Court of Appeal on 26<sup>th</sup> of July 2012 the Appellant had been given leave to appeal against sentence out of time by consent.
6. The Appellant was charged for raping a 5 year old girl by penetrating her vagina with his finger. At the caution interview he had admitted committing the offence and he pleaded guilty when charged in Court.
7. In sentencing the Appellant the learned trial Judge considered his age of 34 years and that he was a first offender.
8. In imposing the sentence, the learned Judge considered the tariff for rape of children which is between 10 to 15 years (**Mark Mutch –v- The State**, [17 November 2000] Criminal Appeal No.60 of 1999, Fiji Court of Appeal).

9. The learned Judge considered the fact that the Appellant had pleaded guilty and saved the Court's time and avoided the need to bring the young female complainant to court to relieve her ordeal by giving evidence, that this was his first offence, that he was a person of limited education and that he had been in custody for about 5 months as mitigating factors.
10. The aggravated factors that were taken into account were the fact the he was an uncle of the victim and the manner in which he had lured the victim.
11. The learned Judge started with a sentence of 10 years imprisonment, for the mitigating factors he had reduced 4 years and for the aggravating factors increased by 6 years so that the sentence was 11 years imprisonment and subjected same to a non-parole period of 8 years imprisonment.
12. The learned Judge has commenced the sentencing at the lower end of the tariff and given due consideration for the mitigating factors set out in paragraph 9 above.
13. In the circumstances of the case the sentence imposed on the Appellant is not harsh and excessive nor unsafe and unsatisfactory as stated in his grounds of appeal considering the fact the victim was a child of 5 years. The learned Judge had given due consideration to the fact that the Appellant had pleaded guilty. Therefore there is no merit in any of the grounds adduced by the Appellant.
14. The grounds of appeal urged by the Appellant are frivolous and vexatious and are bound to fail which would attract the application of Section 35(2) of the Court of Appeal Act. (Cap.12).

**Order of Court:**

Application for leave to appeal is dismissed in terms of Section 35(2) of the Court of Appeal Act (Cap.12) as it is frivolous and vexatious.

Suresh Chandra  
**Resident Justice of Appeal**